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FISCAL IMPACT STATEMENT

LS 7241

BILL NUMBER: SB 419

NOTE PREPARED: Jan 7, 2009

BILL AMENDED:

SUBJECT: Antidegradation of Surface Waters.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: *Total Maximum Daily Load (TMDL) for a Pollutant.* This bill allows the Department of Environmental Management (IDEM) to establish for a surface water the TMDL for a pollutant only if (1) IDEM identifies the pollutant at the time of the initial listing of the surface water; and (2) the pollutant is subject to a numeric water quality criterion.

High Quality Water Default. The bill provides that an exceptional use water for which the Water Pollution Control Board (WPCB) does not complete rulemaking before 2011 for designation as an outstanding state resource water becomes a high quality water by operation of law on January 1, 2011.

Adoption of Rule for Antidegradation Standards. With respect to the adoption of a rule to apply antidegradation standards and implementation procedures, the bill (1) prohibits application of the rule to activities authorized and regulated under a NPDES general permit; (2) allows the rule to regulate a pollutant only if the pollutant is subject to a numeric water quality criterion or federally promulgated effluent guidelines; and (3) requires in a determination of social and economical necessity that substantial weight be given to any applicable determinations by governmental entities.

Deadline for Permit. For an NPDES permit application and a concurrent permit application for associated activity under antidegradation standards, the deadline for IDEM action on both applications is the later of the two action deadlines.

Effective Date: Upon passage.

Explanation of State Expenditures: *Total Maximum Daily Load for a Pollutant.* This provision could result

in a reduction in administrative expenses for IDEM to the extent that it reduces the circumstances under which IDEM must calculate a TMDL. IDEM currently has a process for calculating TMDL and identifying pollutants. Currently, IDEM calculates TMDL even if specified pollutants are not present.

High Quality Water Default. The bill provides that an exceptional use water for which the Water Pollution Control Board does not complete rulemaking before 2011 for designation as an “Outstanding State Resource Water” becomes a “High Quality Water”. The provision could result in a reduction in administrative expenditures by IDEM to the extent that IDEM, which provides staff for the WPCB, will not have to conduct specified studies and examinations required of the Outstanding Resource designation. Additionally, the WPCB will not have to follow specified procedures for adopting rules designating a water as an outstanding state resource.

Adoption of Rule for Antidegradation Standards. The bill prohibits application of an Antidegradation Rule to activities authorized and regulated under a NPDES general permit. This provision would affect IDEM administrative expenses to the extent that the Antidegradation Rule requires more or less oversight activity than the NPDES program. The specific impact will depend on the rule adopted.

The bill allows an Antidegradation Rule to regulate a pollutant only if the pollutant is subject to a numeric water quality criterion or federally promulgated effluent guidelines. This provision could reduce IDEM expenditures if it limits pollutants that are subject to the rule and oversight.

The bill provides that if a rule adopted by the board to apply antidegradation standards and implementation procedures requires a permit for a discharge and the IDEM Commissioner is required to consider whether the proposed discharge is socially and economically necessary, the rule must require the Commissioner to give substantial weight to any applicable determinations by governmental entities. Considering local determinations should have little impact on IDEM expenditures.

Deadline for Permit. For an NPDES permit application and a concurrent permit application for associated activity under antidegradation standards, the deadline for IDEM action on both applications is the later of the two action deadlines. This provision will affect IDEM administrative expenditures to the extent that it could provide for concurrent processing and allow for more time on certain applications.

Background:

TMDL. IDEM currently prepares a list of impaired waters for the purpose of complying with the federal Clean Water Act (33 U.S.C. 1313(d)). Section 1313(d) requires, among other provisions, that each state establish for impaired waters the TMDL for certain pollutants at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

The proposal provides that IDEM may establish for a surface water the TMDL for a pollutant only if:

- (1) in identifying the surface water IDEM identifies the pollutant as a pollutant under consideration for the establishment of the TMDL; and
- (2) the pollutant is subject to a numeric water quality criterion established in a rule or in a statute.

High Quality Water Default. In order to designate a water as an “Outstanding State Resource Water,” the WPCB must determine that the water body has a unique or special ecological, recreational, or aesthetic significance. Additionally, before the WPCB may adopt a rule designating a water body as an outstanding

state resource water, the board must consider the following:

- (1) Economic impact analyses.
- (2) The biological criteria scores.
- (3) The level of current urban and agricultural development in the watershed.
- (4) Whether designation will have a significant adverse effect on future population, development, and economic growth in certain watersheds.
- (5) Whether designation is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

Additionally, before the WPCB may adopt a rule designating a water body as an outstanding state resource water, the WPCB must make available to the public a written summary of the information received and conclusions reached. The IDEM commissioner must present the information to the Environmental Quality Service.

For a waterbody designated as an outstanding state resource water, the WPCB must provide by rule procedures that will prevent degradation and allow for specified increases and additions in pollutant loadings from an existing or new discharge under certain conditions. Other procedures and criteria must also be included in the rule.

“High quality waters” means waterbodies in which the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

Explanation of State Revenues:

Explanation of Local Expenditures: The bill requires in a determination of social and economical necessity that substantial weight be given to any applicable determinations by governmental entities. This provision should have little impact on local expenditures. It could encourage submission of local determinations.

Explanation of Local Revenues:

State Agencies Affected: IDEM.

Local Agencies Affected: Governmental entities that submit determinations regarding discharges into waters.

Information Sources: IDEM.

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